IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 70 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTILAL MOTILAL BARBER, (CORRECTED AS PER CT'S ORDER) - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
THROUGH JAIL for Applicant(s) : 1,MR MA BUKHARI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 21/04/2006

ORAL JUDGMENT

1. Heard Mr MA Bukhari learned advocate for the petitioner and Ms. Nandini Joshi ld. APP for the respondent-State.

2. The petitioner has preferred the present revision application under sec. 397 read with sec. 401 of CrPC, praying therein to quash and set aside the order passed by the ld. Principal Judge, Court No. 1, City Civil Court, Ahmedabad dated 8.1.2004 by which he confirmed the sentence imposed on petitioner by the ld. Metropolitan Magistrate, Court No. 11, Ahmedabad in Criminal Case No. 13/1990. The Ld. Principal Judge convicted the petitioner for the offence punishable under sec. 408 and 477-A of IPC for a period of 2 years S/I and fine of Rs. 20,000/-, in default, six month's S/I on the first count, and under sec. 477-A for a period of six month's S/I and fine of Rs. 5000/-, in default, further S/I of two months.

3. Being aggrieved by the above mentioned order, the petitioner has preferred the present revision application. It is submitted by the ld. Advocate for the petitioner that the courts below have not taken into consideration the evidence on record of the case in convicting the petitioner. The evidence which was relied upon by the prosecution was not appreciated by the courts below in proper perspective and, therefore, the order passed by the courts below requires to be quashed and set aside. The ld. Advocate submitted that the appellate

court has erred in partly allowing the appeal of the petitioner as it was a fit case for acquittal of the petitioner and the order passed by the courts below requires to be quashed and set aside and the petitioner be acquitted forthwith in the matter.

4. As against the aforesaid submissions, ld. APP Ms. Nandini Joshi representing the State submitted that on bare perusal of the order passed by the courts below, it becomes quite clear that no miscarriage of justice is meted out to the petitioner which would call for the interference of this court in a revision application under sec. 397 read with sec. 401 CrPC. Ld. APP further submitted that the courts below had occasion to go through the entire evidence on record of the case while considering the case of the petitioner and passing the order of sentence. The powers under sec. 397 and 401 of CrPC are very limited in nature and can be exercised only in a exception circumstances. Ld. APP further submitted that in view of the concurrent finding given by the courts below, the revision application is without any substance and the judgment rendered by the courts below requires to be upheld.

5. Taking into consideration the submissions canvassed by the ld. Counsel of both the sides and on perusal of the judgments rendered by the courts below, it becomes clear that the petitioner – accused has been convicted for the offence punishable under sec. 408 and 477A of IPC. The ld. Metropolitan Magistrate, court No. 11, Ahmedabad passed the order in Criminal Case No. 13/90 imposing the sentence under sec. 408 for three years S/I and fine of Rs. 3000/-, in default, further S/I for 6 months and under sec. 477-A 2 years S/I and fine of Rs. 2000/-, in default, further S/I for 4 months. That order was challenged in the appeal being Criminal Appeal No. 1/2002 by the accused. The appellate court after considering the entire case confirmed the order passed by the trial court, but modified the order with regard to the sentence under sec. 408 and 477-A of IPC. The ld. Appellate Judge convicted the appellant under sec. 408 and imposed sentence of 2 years S/I and fine of Rs. 20,000/-, in default, S/I for 6 months, while under sec. 477-A of IPC S/I for 6 months and fine of Rs. 5000/-, in default, further S/I of 2 months was inflicted on the petitioner.

6. On perusal of the order passed by the courts below,

both the courts have gone through the entire gamut of oral depositions and the documentary evidence and after going through the same held that petitioner was guilty under the provisions contained under sec. 408 and 477-A of IPC. The petitioner committed grave irregularity while working as Treasurer for Judicial Staff Cooperative Credit and Supply Society to the tune of Rs. 6 lacs approximately. Even though sufficient opportunity was given to him, he could not explain about the misappropriation. As a result of which, criminal proceedings were initiated against him. The courts below after appreciating the oral depositions and documentary evidence held that the petitioner committed offences punishable under sec. 408, 477 and 406 IPC.

7. This court cannot undertake indepth or a minute re-examination of the entire evidence and upset the concurrent finding of the courts below in a revisional jurisdiction under sec. 397 read with sec. 401 of CrPC. In view of the catena of decisions rendered by the Apex Court, the applicant, in my view, has not made out a case for interference by this Court in a revision preferred under sec. 397 read with sec. 401 of CrPC.

8. In light of the foregoing discussion, as the revision application preferred by the petitioner is devoid of merits, the same is liable to fail and is hereby dismissed. Rule is discharged.

9. The petitioner – convict, in view of the judgment passed by the courts below and confirmed in a revision application, is directed to surrender before the Jail Authority on the receipt of the writ to undergo remaining sentence imposed on him by the Appellate Court, forthwith. Bail bond stands cancelled.

(H.B. ANTANI, J.)

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